

State Water Contractors

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June 26, 2006

Ms. Pamela C. Creedon, Executive Officer
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite #200
Rancho Cordova, CA 95670-6114

Re: Draft Order No. R5-2006-___; NPDES No. CA-0079154, Waste Discharge
Requirements for City of Tracy, Tracy Waste Water Treatment Plant, San Joaquin
County

Dear Ms. Creedon:

The State Water Contractors ("State Contractors")¹ submit these comments regarding the draft waste discharge requirements proposed for the City of Tracy's ("City") wastewater treatment plant. Order No. R5-2006-___; NPDES No. CA-0079154. As they are currently drafted, the waste discharge requirements include no effluent limitations to control salinity in the City's wastewater discharge to Old River. Thus, while the draft Order concedes the City's effluent discharge with an average electrical conductivity (EC) of 1.8 mmhos/cm "is high in salt, especially for municipal wastewater," it does nothing other than propose an EC "goal" of 1.35 mmhos/cm to be achieved during the permit term (p. F-47).

The Regional Board's failure to issue effluent limitations requiring the City to reduce the high concentration of salt in its municipal discharge effectively shifts the burden of cleaning up Tracy's wastewater to the SWP and the Federal Central Valley Project ("CVP"). Contrary to the Regional Board's claim that its Order "implements" the objectives of the Water Quality Control Plan adopted by the State Water Resources Control Board for the Bay-Delta Estuary (1995 WQCP), the proposed Order establishes an intermediate salinity "goal" for the City's discharge of 1.35 mmhos/cm that is grossly incompatible with the agricultural water quality objectives established by the State Board's 1995 WQCP. Just four miles downstream at station P-12 (Old River at Tracy Road Bridge) the 1995 WQCP establishes an agricultural water quality objective of 0.7 mmhos/cm from April 1 to August 31 and 1.0 mmhos/cm from September 1 to March 31.

¹ The State Water Contractors organization is comprised of twenty-seven of the twenty-nine public entities that hold contracts with the State of California for the delivery of water from the State Water Project ("SWP"). Collectively, the members of the State Water Contractors provide all, or a part, of the water supply delivered to approximately 23 million Californians, roughly two-thirds of the State's population. The State Contractors provide this water to retailers, who, in turn, serve it to consumers throughout the San Francisco Bay Area, the San Joaquin Valley, the Central Coast, and Southern California.

The water quality “goal” provided in the proposed Order implements *neither* of these objectives nor the identical objectives established in the 1995 WQCP at stations C-6 (San Joaquin River at Brandt Bridge) and C-8 (Old River near Middle River). To the contrary, the proposed Order would allow the City to discharge wastewater effluent containing a salinity concentration nearly *twice* the limit found in the 1995 WQCP.

In Water Right Decision 1641, the State Board imposed the salinity objectives established for stations P-12, C-6 and C-8 on permits issued for the operation of the SWP and CVP. In doing so, the State Board did *not* express an intent to shift to the state and federal projects the responsibility for cleaning up the discharges of upstream municipalities or industrial producers that contribute significant salt loading to municipal treatment works. Nor did the State Board express intent to substitute state or federal water project supplies for the Regional Board’s obligation to control point source discharges of pollution that impact water quality in the south Delta.

To the contrary, the State Board recognized in the 1995 WQCP that elevated salinity in the south Delta is caused by multiple factors, including locally derived salts. (1995 WQCP, P.29.) It thus directed the Regional Board to:

“ . . . continue its salt load reduction program, initiated in response to adoption of the 1991 Bay-Delta Plan, to reduce annual salt loads discharged to the San Joaquin River by at least ten percent . . . “
(1995 WQCP, p. 29.)

Such measures, the State Board noted, “will decrease the need for releases of water from New Melones.” Does the Regional Board believe that setting a salinity “goal” of 1.35 mmhos/cm for the City’s wastewater, when the water quality objective at the nearest downstream compliance point is 0.7 mmhos/cm, will “reduce” the need for releases from New Melones or other Project reservoirs?

When it implemented the objectives of the 1995 WQCP in D-1641, the State Board focused on south Delta salinity concerns. It recognized there are multiple causes of south Delta salinity problems, including the actions of “local water users.” (D-1641 p.86.) It also recognized that south Delta salinity concerns might require multiple solutions. It stated:

The salinity objectives for the interior southern Delta can be implemented by providing dilution flows, *controlling in-Delta discharges of salt*, or by using measures that effect circulation in the Delta. (D-1641 pp. 86-87, emphasis added.)

Notably, D-1641 did not instruct the Regional Board to deal with south Delta salinity concerns by setting “goals” that allow for the discharge of wastewater by municipalities with salinity levels nearly twice the levels permitted by the 1995 WQCP. Nor did D-1641 suggest to the Regional Board that it could increase the burden already imposed upon the SWP and CVP to meet south Delta salinity objectives, by declining to impose effluent limitations for salinity, total

dissolved solids or electrical conductivity on municipal discharges located immediately upstream of the compliance locations set forth in the 1995 WQCP.²

Nor do the statutes or the cases permit the Regional Board to ignore the objectives of the 1995 WQCP when it issues waste discharge requirements. Water Code Section 13263 plainly provides that the Regional Board “*shall* prescribe requirements” as to the nature of any proposed discharge and that “the requirements *shall* implement relevant water quality plans . . . and *shall* take into consideration the beneficial uses to be protected” Moreover, as the Court of Appeal recently confirmed in the *State Water Resources Control Bd. Cases* 136 Cal.App.4th 674 (2006), when a WQCP sets forth a water quality objective, the Porter-Cologne Act requires that the objective be “fully implemented.” (135 Cal.App.4th 674, 729-734.) In so holding, the Court of Appeal *rejected* the State Board’s argument that it need only “consider” the objective in a WQCP and is not required to implement the objective. (*Id.* p.729-730.) According to the Court, by adopting an alternative flow regime in lieu of the Vernalis pulse flow objective found in the 1995 WQCP:

The Board failed to fully implement the 1995 Bay-Delta Plan and instead accomplished a de facto amendment of that plan without complying with the procedural requirements for amending a water quality control plan. In so acting, the Board failed to proceed in the manner required by law and thus abused its discretion.
(136 Cal.App.4th at 734.)

Here, the draft Order proposed by the Regional Board also attempts to “consider” the south Delta objectives adopted by the 1995 WQCP without actually implementing them. After describing the south Delta EC objectives in Table F-3 (p. F-43), after finding that the City’s effluent is “high in salt” (F-45) and after admitting that the impact of the City’s discharge on salinity at the locations included in the permits of the SWP and CVP “has not been determined” (F-44), the draft Order then proposes that no effluent limitations for salinity be adopted. (F-47.) The State Contractors do not believe this satisfies the requirements of either the Legislature or the Courts.

The south Delta is the source of a significant portion of the drinking water supplies for 22 million Californians. Tracy’s wastewater treatment plant discharges its effluent in close proximity to the SWP and CVP export pumps, creating a direct link between the quality of the effluent and the quality of export drinking water supplies. The steps the draft Order takes toward controlling Tracy’s effluent discharges are not adequate to protect drinking water beneficial uses

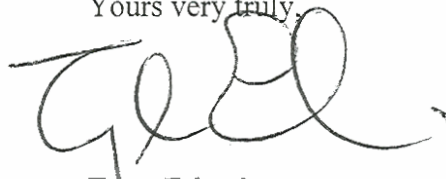
² Subsequent to the adoption of D-1641, the State Board issued a cease and desist order against the Bureau of Reclamation, as operator of the CVP, and the Department of Water Resources, as operator of the SWP, for the purpose of attempting to compel the two projects to meet interim south Delta salinity objectives. The CDO was issued notwithstanding the determination in the 1995 WQCP that other factors contributed to salinity exceedances at the interior Delta stations as well as evidence that the CVP had consistently *met* the EC objectives at Vernalis. The State Board’s decision to issue its CDO has prompted an unusual decision by the United States Government to sue the State Board in state court. The State Contractors have also filed litigation against the State Board in the Sacramento Superior Court challenging the CDO and DWR is pursuing settlement discussions with the SWRCB to identify potential solutions to the CDO issue while a 30-day tolling agreement is in effect.

from adverse impacts due to nitrogen, phosphorus, total organic carbon and salinity loading. The Regional Board should consider additional permit restrictions to protect the Delta as a source of drinking water supplies for much of the state.

Overall, the Regional Board's approach in this matter fails to recognize that the City's request for waste discharge requirements must be analyzed in the much larger context of its impact on the basin-wide efforts now underway to implement the 1995 WQCP and reduce salinity in the south Delta channels. As examples, the staff report does not discuss pretreatment of industrial wastes, such as those emanating from the Leprino Foods facility, as means of reducing the inflow of highly saline waste to the City's wastewater treatment plant. Further, the report does not consider whether funding to support off-site efforts to reduce San Joaquin River salt loads might be a cost effective means of reducing the receiving water impacts of the City's saline discharges. Finally, the impact and cumulative impact of the proposed Order and similar ones adopted by the Regional Board on statewide water supplies has not been considered. There almost appears to be an unstated assumption that it is acceptable to degrade south Delta water quality because Project water supplies can be used to fix the problem, even though the cause of the problem is not SWP operations, but the failure to properly regulate local saline discharges.

Given these deficiencies, the State Contractors request the Regional Board to reconsider its decision not to impose any salinity-related effluent limitations on the City of Tracy's municipal wastewater discharge. Given the proximity of that discharge to the compliance monitoring stations established for SWP and CVP operations in the 1995 WQCP, as well as to the export pumps themselves, the proposed Order will unreasonably impact water supplies and quality, and frustrate efforts to provide higher quality agricultural water supplies in the south Delta region.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Terry Erlewine', written over a horizontal line.

Terry Erlewine
General Manager

cc: SWC Member Agencies